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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,353	09/11/2003	P. Anders I. Bertelrud	2095.001100/P3126	5128

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EXAMINER

RUTTEN, JAMES D

ART UNIT	PAPER NUMBER
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2197

MAIL DATE	DELIVERY MODE
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04/12/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/660,353	Applicant(s) BERTELROD ET AL.	
	Examiner James D. Rutten	Art Unit 2197	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-4, 6-13, 15-21, 23-37.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/James D. Rutten/
 Primary Examiner, Art Unit 2197

Continuation of 3. NOTE:

The claims, if amended as proposed, would not avoid any of the rejections set forth in the last Office action, and thus the amendment would not place the case in condition for allowance or in better condition for appeal.

Claim 16 is presented with new limitations not previously examined within the scope of that claim, and would require further consideration and/or search.

Claims 26-37 have antecedent basis issues introduced with the cancellation of claim 25. As such, the current amendments would not place the application either in condition for allowance or in better form for appeal.

Continuation of 11. does NOT place the application in condition for allowance because:

The amended claim limitations can be reasonably broadly interpreted such that the prior art of record provides a reading on the claim. For example, in contrast to the arguments on pages 8-10 filed 3/28/2011, the claimed "work queue," variously claimed in amended independent claims 1, 9, 16, 17, and 24, can be broadly interpreted according to McKeeman's "journal."

Arguments on pages 10-11 regarding improper hindsight reasoning and lack of motivation to combine are also not persuasive since Robinson provides an explicit suggestion to combine by providing an indication of errors "in real time." This timely indication of errors provides a clear improvement that is faster and more efficient than compilers that do not work in the background.

Arguments regarding Piehler's suppression of error indication are not persuasive due at least to a reasonable broad interpretation of the claim language. Piehler teaches suppression of "at least one of an error and warning" (paragraph [0035]), and suppression of errors during execution (paragraph [0036]).

The remaining arguments are based upon previous arguments as addressed above, and are not persuasive for the same reasons.